



November 4, 2022

Submitted via Regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203 P.O.Box 7604
Ben Franklin Station
Washington, DC 20044

Re: “Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022,” Notice 2022-51 (Oct. 5, 2022)

Introduction

GAF Energy, a Standard Industries company, is the leading provider of solar roofing in the United States. The company’s signature product, the Timberline Solar™ roof system, incorporates the world’s first nailable solar shingle to create an attractive, durable, reliable and easy to install solar roof.

Timberline Solar™ was developed and is produced at the company’s R&D and manufacturing facility in San Jose, California. GAF Energy has begun construction on the company’s second facility - encompassing 450,000 square feet - in Georgetown, Texas. Once completed, the facility will be the largest solar roof production facility, by capacity, in the world.

Over five million new roofs are installed on U.S. homes each year. One out of every four of those roofs come from GAF, the sister company of GAF Energy and the largest roofing and waterproofing company in North America. With access to GAF’s national contractor network, GAF Energy is uniquely positioned to bring residential solar to the mass market, transforming more roofs into solar roofs each year.

The Timberline Solar™ Energy Shingle (ES) has received multiple awards and honors since its launch in early January 2022, including the Best of Innovation award from CES, Green Builder’s Sustainable Home Award, Fast Company’s World Changing Ideas and



Innovation by Design awards, Good Housekeeping’s Best Home Renovation Award, the NAHB Best of IBS Awards Most Innovative Construction Tool, and others.

GAF Energy is dedicated to transforming the solar and roofing industries to generate energy from every roof, and appreciates the opportunity to provide these comments to Notice 2022-51.

Responses to Requests for Comment

Does the determination of “total costs” with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the U.S. need further clarification? Does the term “manufactured product” with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified?

Response:

The section 48 ITC domestic content bonus is available for any “energy project” which satisfies the requirements under section 48. Among other requirements, at least 40% of the total costs of all the manufactured products which are components of the energy project must be attributable to manufactured products which are mined, produced, or manufactured in the United States (the “40% test”).

The first few requests below are straight-forward requests regarding defined terms. Some of these terms the taxpayer believes are mere confirmation of the statute, and others are suggestions to use analogous concepts from existing ITC guidance.

Requests:

1. Adopt the following guidance:
 - a. Whether multiple energy properties are an “energy project” is determined by applying the “single project” factors listed in Notice 2018-59.¹
 - b. The 40% test applies to the energy project in the aggregate. A taxpayer would identify all manufactured products in the energy project, and

¹ The taxpayer believes this is mere confirmation of Congressional intent, per the language in Section 48(a)(9)(A)(ii), which provides that the term “energy project” means a project consisting of one or more energy properties that are part of a single project.



determine if it meets the 40% test with respect to the aggregated total costs of all such manufactured products.²

- c. The term “manufactured product” is defined by reference to 49 CFR 661.3.³
- d. The term “total costs” means all costs properly capitalized by the taxpayer in the basis of the manufactured product.⁴
- e. To the extent a single project consists of energy property described in more than one subsection of Section 48(a)(3)(A), a taxpayer may choose whether to treat the different types of energy properties as part of the same energy project or separate energy projects. For example, if a taxpayer places in service solar shingles that are energy property described in Section 48(a)(3)(A)(i) and associated energy storage technology described in Section 48(a)(3)(A)(ix), the taxpayer may choose whether to aggregate the solar energy property and energy storage technology into one energy project, or to treat the solar energy property as one energy project and the energy storage technology as another energy project, for purposes of the Domestic Content Bonus.⁵
- f. The 40% test applies to manufactured products that are components of the energy project. The total cost of a manufactured product that is manufactured in the United States is taken into account for purposes of the

² The taxpayer believes this is mere confirmation of Congressional intent, per the language in section 45(b)(9)(B)(iii) (after substitution of “energy project” for “qualified facility”), which looks at the total costs of all manufactured products that are components of an energy project.

³ The taxpayer believes this is mere confirmation of Congressional intent, per the language in section 45(b)(9)(B)(i), which refers taxpayers to the general principles of section 661 of title 49. “Manufactured product” is not otherwise defined in section 45.

⁴ “Total costs” is not defined in section 45 or section 661 of title 49. The service has applied the taxpayer’s proposed definition in Notice 2018-59, for purposes of determining costs taken into account under the Five Percent Safe Harbor. The taxpayer proposes that the same definition be used here.

⁵ The taxpayer proposes this guidance to confirm that it does not have to aggregate the costs of energy storage technology with other energy generating property in determining if it satisfies the 40% Test. Specifically, there is not a sufficient market to acquire U.S. manufactured energy storage technology. The costs of energy storage technology are relatively high compared to the cost of associated solar shingles. If taxpayers are required to aggregate energy storage technology with solar shingles in a single “energy project,” they are unlikely to satisfy the Domestic Content Bonus. Requiring taxpayers to aggregate them into a single energy project will therefore disincentivize taxpayers from investing in energy storage technology, which is contrary to the purpose of the statute.



40% test with respect to such energy project, regardless of the origin of the manufactured product's subcomponents.⁶

2. Proposed example of paragraph (f) for BIPV roofing material:

- a. *A taxpayer places into service building-integrated photovoltaic equipment ("BIPV", which may include, but is not limited to, photovoltaic roof shingles or tiles) which BIPV uses solar energy to generate electricity within the meaning of section 48(a)(3)(A)(i). Multiple BIPVs are installed together with shared equipment, such as an inverter and electrical wiring and conduits, to form a single project. Each BIPV is manufactured in the United States by the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials. The subcomponents of the BIPV that are incorporated into the manufactured product through a manufacturing process may or may not be mined, produced, or manufactured in the United States. For purposes of the Domestic Content Bonus, each "BIPV" is a component and a manufactured product of the energy project which manufactured product was mined, produced or manufactured in the United*

⁶ The statutory language in section 45(b)(9)(B)(iii) is ambiguous whether the cost of subcomponents incorporated into manufactured products through the manufacturing process needs to be included in the 40% test. The proposed approach generally matches both section 661 of CFR 49 and FAR Part 25 (on which we understand the 40% test was based). Specifically, section 661 of CFR 49 specifically excludes subcomponents, while FAR Part 25 only considers components of the "end product", which "end product" is most analogous to an energy project under the ITC. Further, requiring taxpayers to look to the cost of subcomponents of the manufactured products is not practically feasible, because a taxpayer will typically not have visibility into manufacturers' cost of parts. Perhaps most importantly, this statutory reading most furthers the purpose of the statute, which is clearly to promote investment and development of renewable energy projects while establishing a domestic manufacturing industry for the related equipment. Reading the statute as proposed (i.e., looking at the manufacturing location of the manufactured products and not to their subcomponents) is the only approach that supports these goals. If the IRS required taxpayers to verify the costs and origins of the subcomponents of the manufactured products, there would then be little expectation that the domestic market would significantly on-shore raw material supply chains, even in the medium term, to allow a meaningful number of taxpayers to benefit from the tax credit bonus. In this event, most taxpayers would move forward with their projects without regard to domestic content considerations and the domestic manufacturing market would not receive the purported benefit of the tax credit bonus. Conversely, there is a limited existing pool of domestic manufacturers of energy project components, but the market would likely expand significantly if taxpayers could rely on these products for the domestic content bonus credit.



States, and the taxpayer may take its cost basis in each BIPV into account for purposes of the 40% test.

Conclusion

GAF Energy appreciates the Department of Treasury's focus on implementing the Inflation Reduction Act of 2022 and providing all stakeholders an opportunity to provide input. If you have any questions, please contact Lucy Zhao at lucy.zhao@gaf.energy.

Sincerely,

/s/ Louis Feldman

Louis Feldman
Chief Tax Counsel, Standard Industries Inc.

/s/ Lucy Zhao

Lucy Zhao
Lead Counsel, GAF Energy LLC